

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**May 24, 2001**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, May 24, 2001, at 1:30 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Jerry Michaelis, Acting Chair; James Barfield (late arrival); Elizabeth Bishop; Frank Garofalo; Bill Johnson; Richard Lopez; George Platt; Harold Warner; and Ray Warren. Dorman Blake; Kerry Coulter; Bud Hentzen; Ron Marnell; and John W. McKay, Jr., were not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; and Karen Wolf, Recording Secretary.

1. **Update Transportation Improvement Program (TIP2000)** – Presentation by Jamsheed Mehta, Transportation.

**JAMSHEED MEHTA**, Planning staff “Good afternoon. This item is where you will wear your MPO (Metropolitan Planning Organization) hats. This is for the purpose of federally funded projects and other significant projects in a TIP.

Unlike the last time, when we talked about the TIP, it lasted over two hours and we talked about one project, this one is a quick amendment to the last years’ TIP. Everything that I have mentioned in the cover memo is what it is. Every project has its local funding already approved by the governing bodies. It had been in an application stage for the most part through the last year or so.

It is important that these projects be in the official TIP for the use of federal funds so that some of these programs can get scheduled or funded. I could go over them, but I could also wait for any questions from you if you have some specific questions to any of these 21 or 22 projects.”

**MICHAELIS** “Are there any specific questions? Okay.”

**MEHTA** “I will need a motion so I can put it into the TIP.”

**MOTION:** That the 2000 Transportation Improvement Program (TIP) Amendment be adopted.

**GAROFALO** moved, **JOHNSON** seconded the motion, and it carried unanimously (8-0).

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2. **Approval of the MAPC minutes for April 5, 2001; April 12, 2001; and April 19, 2001.**

**MICHAELIS** “What I would like to do here is to just take a motion to approve all three sets of minutes and then if you have any corrections to them, make sure that you give them to the secretary.”

**MOTION:** That the minutes for April 5, 2001, April 12, 2001; and April 19, 2001 be approved as amended.

**WARREN** moved, **LOPEZ** seconded the motion, and it carried unanimously (8-0).

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3. **Consideration of Subdivision Committee Recommendations**

**MICHAELIS** “Are there any items that we need to pull for discussion?”

**STRAHL** “Items 3/1 and 3/4.”

**MICHAELIS** “Okay. We can take a motion to approve the other items.”

Subdivision Items 3/2, 3/3, 3/5, 3/6 and 3/7 were approved subject to the subdivision recommendations. **WARNER** moved, **JOHNSON** seconded the motion, and it carried unanimously (8-0).

- 3/2. **SUB2001-22** – Final Plat of HEARTLAND CHURCH ADDITION, located at the southwest corner of Maple and 162<sup>nd</sup> Street West.

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for

approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval. The applicant proposes the use of holding tanks, until sanitary sewer is available.

- B. The site is currently served by Rural Water District No. 4. The applicant shall contact this water district to determine the ability of this property being platted to connect to their water line and submit a letter from the water district to that effect.
- C. City Engineering needs to comment on the need for petitions for future sanitary sewer services. A No Protest Petition for future sanitary sewer extension is requested,
- D. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- E. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan has been approved.
- F. Complete access control along Maple is required by County Engineering. County Fire has requested two openings along 162<sup>nd</sup> Street West.
- G. The applicant shall submit a guarantee for the paving of 162<sup>nd</sup> St. West to the church entrance.
- H. County Engineering needs to comment on the need for additional right-of-way. A 35-ft half-street right-of-way is required for 162<sup>nd</sup> St. West.

The requested right-of-way has been platted.

- I. The applicant needs to revised the legal description to accurately portray the land being platted.
- J. County Surveying requests a better description for the benchmark.
- K. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- M. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- N. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- O. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- P. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- Q. Perimeter closure computations shall be submitted with the final plat tracing.
- R. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- S. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- T. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. A floodway reserve needs to be designated. The plat's text shall denote the creation of the floodway reserves in addition to including the standard floodway language. A flood study is required. An application to FEMA is needed for Letter of Map Amendment. A minimum pad elevation needs to be established.
- D. The benchmark needs a better description.
- E. County Engineering needs to comment on the need for access controls. The final plat tracing shall reference the access controls in the plat's text. County Engineering has required access control except four openings on 79<sup>th</sup> St. South and 103<sup>rd</sup> St. West. 500 feet of complete access control is needed from the north line. One opening is permitted within the south 1,200 feet.
- F. The plat needs to indicate a contingent 50-ft half-street right-of-way on 103<sup>rd</sup> St. West and 79<sup>th</sup> St. South and reference the dedication in the plat's text.
- G. The plat should dedicate additional right-of-way for a temporary turnaround along 79<sup>th</sup> St. South. The temporary turnaround shall be established by separate instrument.
- H. County Engineering has requested street dedication necessary for a major intersection right-of-way.
- I. The property line boundaries need to be indicated with a bold line.
- J. The location of the pipeline easement needs to be indicated.
- K. Railroad right-of-way needs to be indicated that is located within the southeastern portion of the plat.
- L. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- M. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- N. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**3/5.     DED2001-11** - Dedication of Access Control from R.P. and Sharon Lansdowne for property located on the southeast corner of Second Street and Tyler Road.

OWNER/APPLICANT: R.P. and Sharon Lansdowne, 2516 E. Central, Wichita, KS 67214

LEGAL DESCRIPTION: Lot 1, Block 1, Lansdowne's Addition.

PURPOSE OF DEDICATION: This Dedication is a requirement of Zoning Case No. ZON 2000-37, and being dedicated for access control, except for one opening, along Tyler Road..

Planning Staff recommends that the Dedication be accepted.

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**3/6.     DED2001-12** - Dedication of a 20-foot Utility Easement from the Huntington Corporation (Keith Anderson) for property located on the south side of West Central, west of Hoover.

OWNER/APPLICANT: Huntington Corporation, C/O Keith Anderson, 1125 S. Rock Road, Wichita, KS 67207-3317

LEGAL DESCRIPTION: The east 20 feet of the south 196.54 feet of Lot 1, Block A, J. Rogers Addition, Wichita, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This Dedication is a requirement of Lot Split No. SUB 2001-46, and is being dedicated for the construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

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**3/7.     DR2001-05** - Request for a street name assignment of Boston Heights to an alley located north of Harry, west of Broadway.

OWNER/APPLICANT: City of Wichita Addressing Committee, C/O Mark Jenkins, Fire Department, 455 N. Main – 11<sup>th</sup> Floor, Wichita, KS 67202

LEGAL DESCRIPTION: The alley platted in Boston Court Addition, adjacent to Lots 9-16 and adjacent to Lots 1-17 (Odd), Shirks Fourth Addition.

REASON FOR REQUEST: Street name assignment of an alley.

CURRENT ZONING: "MF-29" - Multi-Family District

Note: The property owners of this alley have requested that the alley be named Boston Heights and officially recognized as such by the City.

The Wichita-Sedgwick County Address Committee was created in 1994 to avoid and correct street naming and addressing problems that were being discovered as a result of increasing growth in the county and of using the new Geographic Information System (GIS) maps and databases.

A meeting of the Wichita-Sedgwick County Address Committee was held on March 13, 2001, and it was recommended to assign the name of Boston Heights to this alley.

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Item taken out of order:

- 3/1. **SUB2000-123-** One-Step final plat of HIGH POINT WEST ADDITION, located on the east side of 151<sup>st</sup> Street West, South of Maple.
- A. The applicant shall submit a petition for the extension of sanitary sewer.
  - B. The applicant shall submit a petition for the extension of City water.
  - C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
  - D. A concept plan has been provided indicating a resubdivision of this plat in the future to urban-scale lots. The final plat contains a contingent street dedication along the common property line and special building setbacks in accordance with the concept plan.
  - E. MAPD recommends that the contingent street dedication should be extended to the east property line for future connection to the adjoining unplatted property and increased to the standard 64 feet for through streets. The plat text shall reference the contingent street dedication and indicate that it shall be effective upon the lot split or replatting of an adjoining lot.
  - F. The plat proposes two access openings along 151<sup>st</sup> St. West. Traffic Engineering and MAPD recommend a joint access easement for a shared opening. The access controls should be referenced in the plat text.
  - G. The joint access opening shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
  - H. City Engineering has approved the drainage plan and has requested the platting of a drainage reserve for the existing pond. The reserve may be owned and maintained by the owner of Lot 2. An off-site drainage easement/agreement needs to be submitted.
  - I. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
  - J. The bench mark needs a better described location.
  - K. The lot depth-to-width ratio exceeds 2.5 to 1 and a modification from the Subdivision Committee will be required. A modification has been approved.
  - L. Due to the excessive lot depth, City Fire Department needs to comment on the need for a maximum building setback to accommodate fire prevention equipment. City Fire Department has required a 20-ft access drive if structure is located beyond 150 feet from the front property line.
  - M. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
  - N. The year "2000" should be revised to "2001".
  - O. Traffic Engineering has required the dedication of an additional 20-ft of right-of-way for 151<sup>st</sup> St. West. This right-of-way needs to be denoted on the face of the plat and referenced in the plat text.
  - P. City Engineering has required a No Protest Petition regarding the paving of 151<sup>st</sup> St. West.
  - Q. The 10-ft KGE easement needs to be located.
  - R. The Surveyor's Certificate needs corrected to represent the party responsible for the survey.
  - S. The contingent street dedication needs length and curve data.
  - T. The plat text needs corrected to reference "Lots and a Block".
  - U. On the final plat tracing, the MAPC signature block needs to reference "J.D. Michaelis, Acting Chair".
  - V. The plat text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
  - W. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)

- X. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- Y. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- Z. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- AA. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- BB. Perimeter closure computations shall be submitted with the final plat tracing.
- CC. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- DD. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional easements.
- EE. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**NEIL STRAHL**, Planning staff "This is on the east side of 151<sup>st</sup> Street West, south of Maple. It is an unplatted site, located within the City, encompassing two lots, each containing three acres. The applicant has submitted a concept plan, identified here that indicates a re-subdivision of the plat in the future to urban scale lots.

As you can see, this concept plan shows a cul-de-sac extending east from 151<sup>st</sup> Street. It provides access to 6 smaller lots that range in size from 26,000 to 35,000 square feet. As denoted on the final plat, the applicant has denoted a contingent dedication between both lots as such. There are also special setbacks along that contingent right-of-way. Front set-backs north and south of that contingent right-of-way. That is in conformance with the concept plan. However, the final plat consists of two lots as opposed to the five lots that is indicated in the concept plan. Platting to urban scale lots is a requirement in our current Subdivision Regulations, which has been reinforced by our Comprehensive Plan Committee.

In this case, the Subdivision Committee recommended that the applicant should plat the lots as indicated on the concept plan, which would be the five total lots. A Restrictive Covenant would be provided, tying those lots together, as is specified in the Subdivision Regulations. The applicant is appealing that condition today. He desires only to plat those two lots. The applicant has explained to staff that he will be, however, extending sewer and water across the frontage of the site. The typical situation of the 'leap-frog effect' won't occur in this case, since the utilities will be available. The applicant has, as I said, platted the contingent right-of-way. The only thing the applicant really will not be doing is platting the special building set-backs between the new lots. So it is these six lots right here (indicating) which will require the side lot line set backs. The applicant is not platting those due to his uncertainty at this time where he wants to locate his dwellings.

Staff is in support of this recommendation, mainly due to the extension of utilities. We need a discussion from the Planning Commission, since—as I explained, the Subdivision Committee last week required that the applicant plat these into six lots as opposed to two. That concludes staff's comments, are there any questions for staff?"

**MICHAELIS** "Are there any questions?"

**PLATT** "Neil, I am not sure what you are supporting."

**STRAHL** "The current request is a two-lot plat with the contingent right-of-way with the set-backs from the contingent right-of-way."

**PLATT** "Is that what you are supporting?"

**STRAHL** "Yes."

**PLATT** "You are changed positions from last week?"

**STRAHL** "That is correct."

**PLATT** "Okay. I just wanted to be sure."

**WARREN** "Did you say they have changed their position since last week?"

**MICHAELIS** "That is what he is saying."

**GAROFALO** "They are supporting the applicant's request."

**MICHAELIS** "Are there any further questions of staff? Thank you, Mr. Strahl. Could we hear from the applicant, please?"

**TIM AUSTIN** "I am with Austin Miller. As Neil said, we have just met with them and I think we are in agreement with them. The only thing I might just clarify was on the two lots. The two lots will share the opening. We will just have one access point, which will be at the contingent street dedication. We do have the contingent street dedication across there.

Maybe to rehash real quickly—the thought process was that if he is guaranteeing the utilities across his frontage as Neil said, you don't have that 'leap-frog' effect, which was always a concern that you are extending your utilities across property that is not helping pay for that cost. He is willing to pay for it. We have run the cost estimates and he understands what those special assessments will be and he is willing to pay for that cost.

Also, in 'SF-6' zoning, there is no upper limit on lot sizes, so if you looked at it from that standpoint, there wouldn't be anything other than the lot width to depth ratio, which would be a concern. This is kind of a compromise position. I think, as Marvin has said, it still meets the intent of the plan that if it needs to be further subdivided, it will be able to be subdivided, but it does meet his ability to sell that into two lots and develop it."

**MICHAELIS** "Are there any questions of the applicant?"

**WARREN** "Is the primary reason, then, for not wanting to follow through on the concept plat was that he didn't know where he was wanting to put his house? Is that it?"

Barfield arrived at the meeting at 1:42 p.m.

**AUSTIN** "The guy that owns it—one of these lots is going to be his own residence and he did not want to further subdivide the land. He is still not sure where, on the property, he wants to put the house. He doesn't really want to put it off—you know, extend and guarantee streets across and down the middle. He would really rather be further back. He might be a little bit restricted. It also affects on how you position it. If you did the further lots and you wanted to position your house so the frontage would be back off of your main street, you would want your house to face west, but if you are on lots further to the east and the street was there and the normal density was there, you would probably would face your house to the north or the south. So, it affects it a little bit about how you set your house on the lot—on the property."

**WARREN** "Tim, I think you are familiar with the recommendation that came to us two weeks ago from the committee that made this recommendation for further subdivision. What you had originally in the concept plan fit exactly with what we are talking about, and I think in the future we are going to be looking at that."

**AUSTIN** "I don't know that that is necessarily true. It could be. I think the argument, as I have always understood it about not wanting to do large tract development was twofold. One, we didn't want to have to drag utilities across frontage for which people weren't helping to pay for that cost, and he is willing to do that. The second thought process was that cost—especially on like an 80-acre section—if somebody had 80 acres, that that cost for the street improvements and the utilities would be such that if the owner wants those specials kicked in, wouldn't be able to afford that cost because it would be on probably a per acre basis. He wouldn't be able to afford that.

In this case, we are dragging the utilities across that, he has looked at the numbers as far as the special assessments and believes that they are not going to be such a burden that he can't pay those as an individual. So it kind of negates that argument that we have used on the large tracts. That coupled with the fact that 'SF-6' zoning doesn't have an upper lot size limit."

**WARREN** "Well, I think there is a third issue here and that is that we would be getting contingent dedications, at least, for streets and for utilities that we are not getting now."

**AUSTIN** "That is true. You would get those."

**WARREN** "That is a very important part of it."

**KROUT** "And front and rear set-back lines, establishing what the pattern is going to be if there is future subdivision."

**AUSTIN** "Right. I think we have been able to work out a position that we didn't have the benefit of a couple of weeks ago."

**WARREN** "This is one Commissioner that is very much in agreement with that concept."

**MICHAELIS** "Are there any further questions of the applicant? Thank you, Mr. Austin. Is there anyone else in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition? If not, I will bring it back to the Commission."

**MOTION:** That the Planning Commission recommend to the governing body that the revision to the subdivision of tem 3/1, as requested by the applicant be accepted.

**PLATT** moved, **JOHNSON** seconded the motion, and it carried unanimously (8-0).

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**3/4. SUB2001-49** – One-step Final Plat of SPOTSWOOD ADDITION, located on the north side of MacArthur Road, West of Greenwich Road.

**STRAHL** "This item has been requested to be deferred by the applicant. He was to have submitted a site layout to the Health Department regarding the location of the sewage lagoons on the sites. That has not been done, so he requested a two-week deferral to get that submitted."

**MICHAELIS** "Okay. We will need a motion to that effect. Before we do that, is there anyone here in the audience wishing to speak on this item? Okay."

**MOTION:** That the item be deferred for two weeks.

**GAROFALO** moved, **BISHOP** seconded the motion, and it carried unanimously (9-0).

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**JERRY MICHAELIS**, Acting Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

I would like to remind the members of the Planning Commission that our bylaws require you to disclose any ex-parte contacts that you may have had regarding any of the applications on today's agenda. So I would ask you to please remember to disclose the nature of any such contacts you have had before we open the hearing on each case, and what if any impact that information may have on your opinion of the request.

**ZONING:**

**4/1. VAC2001-00018** – Request to vacate two 16-foot utility easements and a 10-foot KG&E easement.

OWNER/APPLICANT: Fugate Enterprises c/o J Larry Fugate

AGENT: Austin Miller



LEGAL DESCRIPTION: Two 16-ft utility easements established by instrument filed in Misc. Book 231, page 381, over the south 16-ft of Lots 25 & 26 and the south 16-ft of Lots 34 & 35, all in Block4, Quincy Addition.

One 10-ft KG & E Urban Easement established by instrument filed in Misc. Book 532, page 569, over the north 10-ft of the south 22-ft of Lots 41 & 42, Block 4, Quincy Addition.

LOCATION: Generally located northeast of the West Street – University intersection.

REASON FOR REQUEST: The applicant proposes to redevelop the site.

CURRENT ZONING: Subject property is zoned LI Limited Industrial. Properties to the north, south, east and west are zoned LI Limited Industrial.

The applicant is requesting consideration to vacate two 16-ft utility easements and a 10-ft KG&E Easement. The applicant proposes to demolish existing development and redevelop the site. The redevelopment of this of property (a Taco Bell spanning Lots 26 & 25, a combination Blockbuster and retail spanning Lots 34 & 33 and Lots 42 & 41) will encroach on the three easements. The easements are not dedicated on the plat (The Quincy Addition, recorded 03-05 1887), but dedicated by separate instruments; the two 16-ft utility easements dedicated to the City of Wichita, 06-15-1951 and the 10-ft urban easement to KG&E, 01-21-1964.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the follow ing findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May 3 2001, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described utility easements and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the easements described in the petition should be approved subject to the following conditions
1. Applicant shall dedicate 20-ft utility easement for existing sanitary sewer line located in vacated alley.
  2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  3. All improvements shall be according to City Standards

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Applicant shall dedicate 20-ft utility easement for existing sanitary sewer line located in vacated alley.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
3. All improvements shall be according to City Standards.

**4/2. VAC2001-00021 - Request to vacate complete access control.**

OWNER/APPLICANT: Bryan Lagaly Homes

AGENT: PEC c/o Rob Hartman

LEGAL DESCRIPTION: The west 38-ft of Lot 98, Block 2, the Courts II Addition.

LOCATION: Generally located between Edgemoor Drive and Pembroke Circle

REASON FOR REQUEST: The applicant proposes to connect Edgemoor Drive with Pembroke Circle.

**CURRENT ZONING:** Subject property is zoned SF-6 Single Family Residential. Properties to the north, east and west are zoned SF-6 Single Family Residential. Property to the south is zoned SF-6 Single Family Residential and MF-29 Multifamily.

The applicant is requesting consideration to vacate complete access control of the west 38-ft of the south side of Lot 98, Block 2, The Courts II Addition. The vacation would provide access to undeveloped Block 3 and an undeveloped section of Block 2, The Courts Addition II, with a proposed extension of Edgemoor Drive (Ex II), through Lot 98. Lot 98 is a vacant single-family lot. The vacation would allow Edgemoor to be extended north to the 24-platted lots in these two blocks. Block 3 and this undeveloped section of Blk 2 (to be referred to as Blk 2) are bordered on the east, west and north sides by drainage easements and undeveloped MF-29 Multi-family on the south. The properties to the north, east and west are developed single family residential. The applicant's request will provide the only access to Blks 2 & 3, as the proposed access will allow the applicant to avoid bridging Pembroke Circle across the drainage easement on the west, which is presently the platted access into Blks 2 & 3. Currently Pembroke Circle ends at the west side of the western drainage easement (Ex I, B) and Edgemoor ends (Ex I, A) at Lot 98. Per Plat(s), there is a 15-ft x 75-ft temporary street turnaround easement (Woodlawn Place Add, recorded 04-23-74, Ex III) where Edgemoor ends at Lot 98. The Plat (Ex III) shows that the temporary street turnaround easement will be void at the time Edgemoor Drive is extended to the north. There is a 20-ft (south end) to 12-ft (north end) emergency access easement (Ex I, D, per plat, The Courts II Add, approved WCC, 07-12-88) on the east side of the drainage easement, abutting Lot 98, into Blks 2 & 3. The proposed extension of Edgemoor will not affect access to the currently developed areas around Blocks 2 & 3, but merely allow access to Blocks 2 & 3.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time May, 3 2001, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described access control and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of complete access control described in the petition should be approved subject to the following conditions
1. Dedicate 32-ft right-of-way for extension of Edgemoor Dr through Lot 98, Block 2, The Courts II Addition, to Pembroke St.
  2. Dedicate 15-ft utility – drainage easement on both sides of the 32-ft Edgemoor Dr right-of-way

**BILL LONGNECKER**, Planning staff "The Subdivision Committee considered the request to vacate on these two items at their May 17 meeting and recommended approval with the conditions you have in your staff report. The conditions that you have with your staff report have not changed since the May 17 meeting. Do you have any questions for staff on these two items?"

**MICHAELIS** "Are there any questions? Thank you. May we hear from the applicant, please?"

**ROGER BROOKS** "I have a hand-out I would like to circulate to the Board. I am the architect for the proposed development, speaking on behalf of the applicant. What we are projecting on the screen here is the depiction of the existing condition, showing the existing Taco Bell here (indicating) and the existing Auto Service Shop here, and the old Higgins Rental location and building to the north.

As you might note, due to street widenings in the past and the fact that this was developed early, probably before annexation to the City, the major street setbacks are not observed by two of the buildings and the proposed redevelopment will bring that situation into conformance. The present owner of the Taco Bell is the developer in this case, and they will be rebuilding essentially on the premises.

This second exhibit indicates the proposed redevelopment. Taco Bell is in this location (indicating), a Blockbuster Video is anchor tenant to a retail building that sets back on the site. The location of the buildings is such that it really will enhance the open feeling along West Street that now, in certain areas, it seems very closed in and tight to the street.

The existing easements that we are asking to be vacated are shown with the hatched lines, and as you can see, they do interfere with the new development, of course. We are able to serve the proposed buildings with city utilities without

utilizing those existing easements. In fact, the easements have been in existence for some 40 to 50 years and there are no major lines in those easements. We have in process—in fact we have submitted a draft—an easement grant to the City for the existing sanitary sewer on the property, which currently has no easement at all. So we have got that process started. We worked out the utility arrangements with KG&E as far as electrical power. That would be two transformers on site here and here (indicating). Those easements and agreements are already in place with KG&E.

(Indicating) This is an elevation of the proposed retail building and Taco Bell is similar, in fact the development will be coordinated where the same colors and materials will be used on both buildings. So I think it is a redevelopment proposal that will really enhance almost an entire block long area of West Street. And I might add, it is all privately funded. I would be glad to answer any questions if you have any."

**MICHAELIS** "Are there any questions for Mr. Brooks?"

**GAROFALO** "Are you going to re-plat this?"

**BROOKS** "No, sir."

**GAROFALO** "Doesn't it have to be?"

**KROUT** "Well, it is sort of a judgment call on the part of the staff as to whether or not the issues that someone who is redeveloping the site becomes so complicated that it should really be replatted instead of just vacations. I wasn't involved in the discussion when we took in the case, but I guess the feeling was that because these are just three utility easements—and I assume the north/south alley is already vacated?"

**BROOKS** "Yes, it is."

**KROUT** "That it was simple enough that it could be handled through a vacation process."

**MICHAELIS** "Are there any further questions?"

**LOPEZ** "On the plat, aren't you supposed to indicate when there are utilities in the easements? I remember at the meeting that Southwestern Bell stated that they had a line in there, and then the sanitary sewage for 20 foot."

**BROOKS** "There is an existing sanitary sewer in this area (indicating) with the end manhole here, and it is flowing to the south. I believe here was also an existing Southwestern Bell line in there, yes. We will be happy to work with Southwestern Bell in terms of the relocation of that line, but in order to satisfy the sewer easement situation, we have drafted and have on file now with the Water Department, an easement as shown here (indicated) for that sewer line."

**MICHAELIS** "Okay. Thank you, sir. Is there anyone else in the audience wishing to speak on this item in favor of? Anyone wishing to speak in opposition to? If not, we will bring it back to the Commission."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved, as recommended by the Subdivision Committee.

**PLATT** moved, **WARNER** seconded the motion, and it carried unanimously (9-0).

**LONGNECKER** "I was under the impression that I had presented the two vacation items to be considered and approved by the Planning Commission at one time."

**MICHAELIS** "How about if we do this—unless anybody has any questions on Item 4/2, VAC2001-00021 that we just take a motion on it?"

**LONGNECKER** "The Subdivision Committee considered the request to vacate at their May 17 meeting, and they recommended approval with staff's recommended conditions. These conditions have not changed since the Subdivision Committee met."

**MICHAELIS** "Okay. Is the applicant here wishing to speak on this item? Is there anyone else in the audience wishing to speak in favor of or in opposition to? If not, we will bring it back to the Commission."

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to the Subdivision recommendations.

**JOHNSON** moved, **WARREN** seconded the motion, and it carried unanimously (9-0).

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- 5a. **Case No. CUP2000-00021**- Kiser Properties, LLC, c/o John L. Kiser (Owner); Ritchie Associates, Inc. c/o Rob Ramseyer (Applicant), MKEC Engineering Consultants, Inc. c/o Greg Allison (Agent) request the creation of the Kiser West Community Unit Plan (DP-254); and
- 5b. **Case No. ZON2000-00022** – Kiser Properties, LLC, c/o John L. Kiser (Owner); Ritchie Associates, Inc. c/o Rob Ramseyer (Applicant), MKEC Engineering Consultants, Inc., c/o Greg Allison (Agent) request zone change from “LC” Limited Commercial and “SF-20” Single-Family Residential to “LC” Limited Commercial, on property described as:

CUP2000-00021

A tract of land lying in the Northeast Quarter, Section 16, Township 27 South, Range 2 East of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas, more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter, Section 16, Township 27 South, Range 2 East, thence South along the East line of said Northeast Quarter on an assumed bearing of S01degrees 03'27"E, 50.00 feet; thence S88 degrees 53'55"W, 50.00 feet parallel with the North line of said Northeast Quarter to the point-of-beginning; thence S01 degrees 03'27"E, 2095.00 feet parallel with the East line of said Northeast Quarter; thence S88 degrees 53'55"W, 260.00 feet parallel with said North line; thence N01 degrees 03'27"W, 1834.80 feet; thence S88 degrees 53'55"W, 334.80 feet; thence N00 degrees 32'23"W, 260.01 feet to a point 50.00 feet South of said North line; thence N88 degrees 53'55"E, 592.45 feet to the point-of-beginning.

ZON2000-00022

A tract of land lying in the Northeast Quarter, Section 16, Township 27 South, Range 2 East of the 6th Principal Meridian, Wichita, Sedgwick County, Kansas, more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter, Section 16, Township 27 South, Range 2 East, thence South along the East line of said Northeast Quarter on an assumed bearing of S01degrees 03'27"E, 50.00 feet; thence S88 degrees 53'55"W, 50.00 feet parallel with the North line of said Northeast Quarter to the point-of-beginning; thence S01 degrees 03'27"E, 2095.00 feet parallel with the East line of said Northeast Quarter; thence S88 degrees 53'55"W, 260.00 feet parallel with said North line; thence N01 degrees 03'27"W, 1834.80 feet; thence S88 degrees 53'55"W, 334.80 feet; thence N00 degrees 32'23"W, 260.01 feet to a point 50.00 feet South of said North line; thence N88 degrees 53'55"E, 592.45 feet to the point-of-beginning. Generally located at the southwest corner of 13<sup>th</sup> Street North and Greenwich Road.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting to create the Kiser West Community Unit Plan on a 13.71 acre unplatted tract located at the southwest corner of 13<sup>th</sup> Street North and Greenwich. The applicant is also requesting to rezone a portion the subject property from “SF-20” Single Family Residential to “LC” Limited Commercial. The remainder of the subject property is currently zoned “LC” Limited Commercial.

The surrounding area is characterized by a three-square mile industrial complex for Raytheon to the north, south, and west and a developing suburban area with significant amounts of remaining undeveloped property for both residential and commercial use to the east. Undeveloped property east and northeast of the site across Greenwich has been approved for commercial development under the 59 acre Gateway Center CUP and the 20 acre Dillons 13<sup>th</sup> and Greenwich CUP. Undeveloped property zoned for residential development also is located east and northeast of the site. The nearest properties developed with residential uses are located in the Preston Trails subdivision that is located southeast of the site across Greenwich.

Due to the subject property's close proximity to the runway at Raytheon, planning staff encouraged the applicant to work with Raytheon to limit their proposal's impact on the operations of the runway. Planning staff understands that the applicant has reached an agreement with Raytheon on the sale of land south and west of the subject property and that the land will be incorporated into Raytheon's industrial complex. This land sale limits the commercial development to a depth of 250 feet along 13<sup>th</sup> Street North and Greenwich, which limits the impacts of the proposal on the operations of Raytheon's runway. To further limit the impacts of the proposal on the operations of Raytheon's runway, planning staff recommends that residential development not be permitted on the site and that buildings be limited to 25 feet in height unless an Airport Hazard Zoning Permit for Area A is granted.

As shown on the development plan (attached), the applicant proposes to divide the subject property into nine parcels. All parcels are proposed for “LC” Limited Commercial zoning and all uses permitted by-right in the “LC” district except correctional placement residences; group residences; group homes; halfway houses; and night clubs including adult entertainment, taverns, and drinking establishments. The proposed uses also include microbreweries when associated with an eating establishment; however, a microbrewery is first permitted in the “GC” General Commercial district and is not permitted in the “LC” district requested by the applicant.

All parcels are proposed for a maximum 30% building coverage and a maximum 35% gross floor area ratio. The maximum building height proposed is 35 feet for all parcels. Landscaping is proposed per the City of Wichita landscape

code. Signs are proposed to be monument type with a height not to exceed 20 feet. Sign square footage is proposed to be limited to 80 percent of street frontage with signs spaced at least 150 feet apart. Building setbacks of 35 feet on the front and 20 feet on the rear are proposed. Architectural control is proposed for all parcels. Access controls line up with the access points to the property across Greenwich to the east. No off-site traffic improvements are proposed.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LC", "SF-20", & "GI"	Undeveloped, Raytheon
SOUTH:	"SF-20"	Raytheon
EAST:	"LC" & "SF-20"	Undeveloped
WEST:	"SF-20" & "LI"	Raytheon

**PUBLIC SERVICES:** The site has access to 13<sup>th</sup> Street North, a four-lane arterial, and Greenwich, a two-lane arterial. Traffic volumes on 13<sup>th</sup> Street North are approximately 5,700 vehicles per day and are projected to increase to approximately 17,500 vehicles per day in the 2030 Transportation Plan. Traffic volumes on Greenwich are approximately 3,500 vehicles per day and are projected to increase to approximately 16,500 vehicles per day in the 2030 Transportation Plan. The estimated traffic volumes in the 2030 Transportation Plan do not include the impact of the 59 acre Gateway Center CUP, which is estimated to generate an additional 23,600 vehicles per day. As proposed, commercial development on the subject property would generate another 8,900 vehicles per day; therefore, planning staff is recommending access controls and traffic improvements to mitigate negative impacts on the through-traffic capacity of the adjoining arterial streets. The site is not currently served by public water or sewer service; however, public water and sewer are available to be extended to the site.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita Land Use Guide in the 1999 Update to the Comprehensive Plan indicates that the site is appropriate for "Industrial" development. The proposed commercial development is compatible with the "Industrial" designation in the Land Use Guide. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial uses be located adjacent to arterial streets; in compact clusters; and have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas. The proposed commercial development conforms to the Commercial Locational Guidelines.

**RECOMMENDATION:** Based on the information available prior to the public hearing, planning staff recommends the request be APPROVED subject to the following conditions:

- A. APPROVE the zone change (ZON2000-00022) to "LC" Limited Commercial subject to platting within one year.
- B. APPROVE the Community Unit Plan (DP-254: Kiser West CUP) subject to platting within one year and subject to the following conditions:
  1. Microbreweries shall be removed from the list of permitted uses.
  2. Service stations, convenience stores, drive-in/drive-through restaurants, and vehicle repair shall be prohibited on Parcels 7, 8, and 9.
  3. Residential uses shall be prohibited on all parcels.
  4. Buildings shall not exceed 25 feet in height unless an Airport Hazard Zoning Permit for Area A is granted prior to the issuance of a building permit.
  5. All utilities shall be installed underground.
  6. Off-site and portable signs shall not be permitted.
  7. A plan for a pedestrian walk system to link proposed buildings with the entrances and sidewalks along 13<sup>th</sup> Street North and Greenwich shall be submitted for approval by the Planning Director prior to the issuance of building permits.
  8. The shared access openings between Parcels 1 and 2, Parcels 2 and 3, and Parcels 6 and 7 shall be limited to right-in/right-out only.
  9. Traffic improvements shall be guaranteed at the time of platting. The required traffic improvements are anticipated to be: an accel/decel lane along the entire 13<sup>th</sup> Street North and Greenwich frontage, a left turn lane at all openings not restricted to right-in/right-out only, and a portion of the cost of signalization at the major opening along Greenwich.
  10. Prior to publishing the resolution establishing the zone change, the applicant shall record a document with the Register of Deeds indicating that this tract (referenced as DP-254: Kiser West CUP) includes special conditions for development on this property.

11. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The subject property is surrounded on three sides by industrially-zoned property located within the three-square mile Raytheon industrial complex. The size and intensity of this industrial complex, including an airfield runway located immediately west of the subject property, dominates the existing character of the neighborhood. East of the subject property is undeveloped land approved for extensive commercial development.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is currently zoned "LC" Limited Commercial and "SF-20" Single-Family Residential. Due to the site's proximity to the Raytheon runway where aircraft accidents are most likely to occur and noise from the airfield will significantly impact adjacent uses, the site is not suitable for residential uses. The site is most suitable for commercial or industrial uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval, including the limitation on the proposed uses, and the applicant's proposed signage restrictions, architectural control, and landscaping requirements should mitigate detrimental affects on surrounding properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita Land Use Guide in the 1999 Update to the Comprehensive Plan indicates that the site is appropriate for "Industrial" development. The proposed commercial development is compatible with the "Industrial" designation in the Land Use Guide. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial uses be located adjacent to arterial streets; in compact clusters; and have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas. The proposed commercial development conforms to the Commercial Locational Guidelines.
5. Impact of the proposed development on community facilities: The proposed commercial development will increase the traffic on the two arterial streets which serve the site. However, the recommended access controls and traffic improvements should mitigate the negative impacts on the through-traffic capacity of the adjoining arterial streets.

**KNEBEL** "The applicant is asking to create the Kiser West Community Unit Plan on nearly 14 acres at the southwest corner of 13<sup>th</sup> street and Greenwich. It actually has most of its frontage along Greenwich. The applicant is also requesting to rezone the portion of the property which is shown on the slide that is currently zoned 'SF-20' to 'LC' Limited Commercial. The largest neighbor to this particular property is the Raytheon Industrial complex, which is located in three directions from this site. The site is currently undeveloped. To the northeast is undeveloped property which has been approved for commercial development in a Dillon's CUP. To the east is a very large commercial tract which has been approved within the last couple of years, called the Gateway Center CUP. To the south is some undeveloped property on the west side of Greenwich, and then further south of that is some residential neighborhoods that have developed within the last 5 to 10 years.

The applicant is proposing to divide the tract into 9 parcels. He is proposing that all 9 parcels be zoned Limited Commercial. One item of note—the applicant did include micro-breweries as a permitted use on these parcels—however did not request General Commercial zoning, which is the first zoning district in which that use is a permitted use. One of the conditions that I will go over later is to remove that particular use. I think the applicant may address that, but this particular hearing was not advertised to consider that particular zoning district, which is more intense than the Limited Commercial that was requested. So, it would not be able to be granted today without going through a new public notification and public hearing process.

The conditions that the applicant proposes are relatively standard. There is not really anything in them that is unusual. They are very similar to the conditions that are on the Gateway Center CUP that is to the east of this particular property. I won't go through those point by point unless someone is interested. This particular site has access to two arterial streets, 13<sup>th</sup> Street North and Greenwich. Most of the frontage is along Greenwich. The Planning staff is recommending that access controls and traffic improvements be determined through the platting process in order to mitigate any impacts that this proposal would have on the through traffic capacity of those arterial streets. The site does not currently have public water and sewer service; however it could be extended to the site. We are recommending that guarantees for that be handled through the platting process.

This particular property is identified as appropriate for industrial use in the Land Use Guide of the Comprehensive Plan. The commercial uses that are requested by the applicant are actually less intense than the industrial designation in the Land Use Guide. We also feel that the nature of the request and the design requirements that the applicant has proposed for the CUP caused this particular request to meet with the commercial locational guidelines in terms of compatibility with neighboring properties that are used for residential or other less intense uses.

The Planning staff is recommending that this request be approved. We are recommending approval of the zoning, subject to platting as well as the Community Unit Plan subject to platting within 1 year. We are recommending a number of conditions, which are listed on Page 4. I will go through those and try to explain them.

The first one is the removal of the microbreweries, which I explained previously--since the zoning district will not be in place to support that particular use. We are recommending that the southernmost three parcels, which are immediately across the street from residential property, those uses that are less compatible with the residential properties in terms of the amount of traffic and noise and trash, etc., that they tend to generate be restricted from those three parcels on the south end. Those being service stations, convenience stores, drive-in or drive-through restaurants and vehicle repair.

We are recommending that residential uses not be permitted on any of these parcels. That is due to the close proximity to the airfield runway, which you can see on the aerial. We don't think that residential uses is a wise land use in that particular location, so we are recommending that it not be permitted. It is also given the site size and the orientation of all of the lots—really is probably not a very viable use given the size and orientation of those lots either.

The property is within what is termed 'Area A' of the Airport Hazard Zoning permit map, which requires that buildings over 25 feet in height receive a zoning permit exemption. We are recommending that that condition be placed in the CUP. It is going to be a requirement anyway, but we are recommending that we put it in the CUP language so that it is known up front to anybody who might purchase one of these properties and develop it in the future.

We are recommending that all utilities be installed under ground and that no off-site or portable signs be permitted. We are recommending that a plan for a pedestrian walk be approved prior to the issuance of building permits. As far as the access controls, we are recommending that those access controls very near the intersection (indicating) in these locations here be right in/right out only and then to line up with the access to the Gateway Center, if you will look at the drawing, the access between Parcels 6 and 7 lines up with the right-in/right-out only access on the east side of Greenwich. It really doesn't make any sense to us to have right-in/right-out on the east side but not on the west side. So we are recommending that for the west side as well and we are recommending that the traffic improvements be guaranteed at the time of platting. We have made a list of what those might be, subject to change, based on the additional review at that time. These are based on the findings on Page 5 of your staff report, and I can answer your questions."

**MICHAELIS** "Are there any questions of staff?"

**GAROFALO** "I just want to make this clear in my mind on the accesses. Will you repeat what you said about the right-in/right-out on all of the accesses."

**KNEBEL** "On the access between Parcels 1 and 2 and Parcels 2 and 3, we are recommending it, due to the close proximity to the intersection. On Parcels 6 and 7, it lines up exactly with an access to the tract on the east. That access to the tract on the east is right-in/right-out only, and it really defeats the purpose to have the west side of the street be full movement and the east side be right-in/right-out only."

**MICHAELIS** "Are there any other questions of staff? Thank you, Mr. Knebel. Applicant please."

**GREG ALLISON** "I am with MKEC, here representing the applicant. We are in general agreement with all of the staff comments. We have talked with staff and worked through several items, and also with the adjacent landowners. I felt that we came up with a pretty good plan.

I just wanted to point out a couple of items in the staff comments. I think Scott clarified them pretty well. On the traffic improvements, we do want to make sure that those items are defined at platting time and not necessarily at the zoning time, which we feel will happen. Also, we did discuss a micro-brewery situation. We really want to be able to use that in a situation where you have a restaurant, not necessarily a micro-brewery where it is just producing the beer. I am not sure if that is something that ought to be addressed in the future with zoning regs, but that is a different subject.

Dale helped us a little bit on that, talking with OCI. They feel that we probably need to come in for a zone request based on the way the regs are written now, but the only sense we wanted to use that for was in the sense of a restaurant.

Other than that, I feel like we worked through a lot of issues on this for several months and we would be happy to get your approval today."

**MICHAELIS** "Are there any questions of the applicant?"

**WARREN** "I understand that you are in agreement with all of their conditions except for No. 1, which you kind of question?"

**ALLISON** "Right. I'm not sure that we can really work through that today."

**WARREN** "Except if it becomes part of the CUP, you would have to come back and amend it later. I guess that is what they are recommending."

**ALLISON** "Right. They are recommending removing microbreweries..."

**WARREN** "Oh, be removed."

**ALLISON** "Yeah, based on conversations with Scott and Dale and their conversations with OCI, I don't think there is any way we can get around that. But it is kind of unfortunate because I think the intent of what we want to do is just to use it in a restaurant situation."

**WARREN** "Let me clarify microbrewery. We have one in Old Town. Is that what we are talking about?"

**ALLISON** "Right. Like the River City Brewery."

**WARREN** "I don't know that I object to that. Generally speaking, that is going to be a part of the restaurant, a kind of feature of the restaurant. I would be all for eliminating that requirement, I think."

**PLATT** "We can't."

**WARREN** "We can't...in a CUP?"

**KROUT** "No. The Zoning Code lists that as a specific use and says that use is first permitted in the General Commercial district. So you would have to deal with that issue by amending the Zoning Code."

**WARREN** "But he doesn't have to have a CUP then. In case we move allow it later, he wouldn't have to amend his CUP."

**KROUT** "If you change the Code in the future to allow it as a permitted use, it would either be permitted or adjusted to be permitted, depending on how you wrote this without his having to amend the CUP."

**MICHAELIS** "Are there any further questions of the applicant? Thank you, Mr. Allison. Is there anyone else in the audience wishing to speak on this item in favor of? Is there anyone wishing to speak in opposition to? Seeing none, I will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The subject property is surrounded on three sides by industrially-zoned property located within the three-square mile Raytheon industrial complex. The size and intensity of this industrial complex, including an airfield runway located immediately west of the subject property, dominates the existing character of the neighborhood. East of the subject property is undeveloped land approved for extensive commercial development. The suitability of the subject property for the uses to which it has been restricted: The subject property is currently zoned "LC" Limited Commercial and "SF-20" Single-Family Residential. Due to the site's proximity to the Raytheon runway where aircraft accidents are most likely to occur and noise from the airfield will significantly impact adjacent uses, the site is not suitable for residential uses. The site is most suitable for commercial or industrial uses. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval, including the limitation on the proposed uses, and the applicant's proposed signage restrictions, architectural control, and landscaping requirements should mitigate detrimental affects on surrounding properties. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita Land Use Guide in the 1999 Update to the Comprehensive Plan indicates that the site is appropriate for "Industrial" development. The proposed commercial development is compatible with the "Industrial" designation in the Land Use Guide. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial uses be located adjacent to arterial streets; in compact clusters; and have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas. The proposed commercial development conforms to the Commercial Locational Guidelines. Impact of the proposed development on community facilities: The proposed commercial development will increase the traffic on the two arterial streets which serve the site. However, the recommended access controls and traffic improvements should mitigate the negative impacts on the through-traffic capacity of the adjoining arterial streets.) I move that we recommend to the governing body that the request be approved, subject to the following:

APPROVED subject to the following conditions:

- C. APPROVE the zone change (ZON2000-00022) to "LC" Limited Commercial subject to platting within one year.
- D. APPROVE the Community Unit Plan (DP-254: Kiser West CUP) subject to platting within one year and subject to the following conditions:



1. Microbreweries shall be removed from the list of permitted uses.
2. Service stations, convenience stores, drive-in/drive-through restaurants, and vehicle repair shall be prohibited on Parcels 7, 8, and 9.
3. Residential uses shall be prohibited on all parcels.
4. Buildings shall not exceed 25 feet in height unless an Airport Hazard Zoning Permit for Area A is granted prior to the issuance of a building permit.
5. All utilities shall be installed underground.
6. Off-site and portable signs shall not be permitted.
7. A plan for a pedestrian walk system to link proposed buildings with the entrances and sidewalks along 13<sup>th</sup> Street North and Greenwich shall be submitted for approval by the Planning Director prior to the issuance of building permits.
8. The shared access openings between Parcels 1 and 2, Parcels 2 and 3, and Parcels 6 and 7 shall be limited to right-in/right-out only.
9. Traffic improvements shall be guaranteed at the time of platting. The required traffic improvements are anticipated to be: an accel/decel lane along the entire 13<sup>th</sup> Street North and Greenwich frontage, a left turn lane at all openings not restricted to right-in/right-out only, and a portion of the cost of signalization at the major opening along Greenwich.
10. Prior to publishing the resolution establishing the zone change, the applicant shall record a document with the Register of Deeds indicating that this tract (referenced as DP-254: Kiser West CUP) includes special conditions for development on this property.
11. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

**LOPEZ** moved, **GAROFALO** seconded the motion.

**BISHOP** "I have a question. I would like some clarification as to microbrewery or restaurant. It says in the condition that microbreweries would be removed from the list of permitted uses. That mean that a restaurant would be permitted, just not a microbrewery?"

**KROUT** "Yes."

**BISHOP** "Okay."

**VOTE ON THE MOTION:** The motion carried unanimously (9-0).

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6. **CUP001-00017 DP-222 Reed Commercial CUP** – 21/127 L.C. (Ritchie Associates, owner/applicant) c/o Greg Allison request to amend the Reed Commercial Community Unit Plan to increase the overall size of the CUP and increase pad sizes.

**MICHAELIS** "The applicant has requested the deferral of this item. We will need a motion."

**MOTION:** That the agenda item be deferred for 2 weeks.

**JOHNSON** moved, **WARNER** seconded the motion, and it carried unanimously (9-0).

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7. **CON2001-00029** – Tim and Grace Simon (Owner/Applicant) request a Conditional Use to allow a Riding Academy or stable on property described as:

That part of the East Half of the Southwest Quarter of Section 20, Township 26 South, Range 3 West of the 6th P.M., Sedgwick County, Kansas described as: Commencing at the Southeast corner of said Southwest Quarter; thence South 90 degrees West, along the South line of said Southwest Quarter, 1289 feet for a place of beginning; thence North 00 degrees 44'08" West, 509 feet; thence North 29 degrees 34'21" East, 764 feet; thence North 30 degrees 51'43" East, 354 feet; thence North 30 degrees 00'44" East, 383 feet; thence North 45 degrees 05'12" East, 59 feet; thence North 28 degrees 50'21" East, 182 feet; thence North 31 degrees 59'27"

East, 275 feet; thence North 53 degrees 48'55" East, 96 feet; thence North 81 degrees 08'06" East, 165 feet to a point in the East line of said Southwest Quarter; thence North 00 degrees 44'40" West, along the East line of said Southwest Quarter, 326.54 feet to the Northeast corner of the Southwest Quarter; thence 89 degrees 59'57" West, along the North line of said Southwest Quarter, 1319.12 feet to the Northwest corner of the East Half of said Southwest Quarter; thence S 00 degrees 44'08" East along the West line of the East Half of said Southwest Quarter, 2652.55 feet to the Southwest Quarter corner of the East Half of said Southwest Quarter; thence North 90 degrees East along the South line of said Southwest Quarter, 30.54 feet to the place of beginning. Generally located north of 45<sup>th</sup> Street North and east of 295<sup>th</sup> Street West.

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The application area is a 34.11 acre un-platted tract that is located north of 45<sup>th</sup> Street North and approximately ¼ mile east of a 295<sup>th</sup> Street West. The property is triangular shaped with a creek forming the eastern property line. The creek is heavily treed. There is also a significant tree row and pond along the north property line. The applicants have also planted an estimated 30-foot wide tree row along the west property line. Access to the site is via a private drive off of 45<sup>th</sup> Street North. The property is currently developed with a residence, stable and corrals.

The applicants propose to develop a 200-foot by 50-foot horse barn, an outdoor arena (200 feet by 100 feet) and a practice track. These facilities are to be located south of the applicant's current residence and corrals. Parking is shown to the north and west of the proposed barn and arena. The site plan also depicts restroom facilities. No bleachers or permanent seating are shown, nor is any outside lighting depicted. (The applicant will need to contact appropriate agencies – e.g. City-County Health, County Code Enforcement, etc. – to ascertain minimum development standards regarding number of parking spaces, type of parking surface, restroom and building standards, etc.)

Access to the site is via 45<sup>th</sup> Street which is a two-lane sand and gravel township maintained road. The private driveway connects to 45<sup>th</sup> Street just west of a bridge and just east of a neighbor's home.

All adjoining land is zoned "RR" Rural Residential and is used for crop production. There are scattered large lot residence and farmsteads in the area. The closest home to the proposed barn and arena is approximately 700 to 1000 feet away. A neighbor's home is located near the drive to the application area and will be aware of any increase in traffic levels.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR" Rural Residential; pond and cropland  
SOUTH: "RR" Rural Residential; cropland and residences  
EAST: "RR" Rural Residential; creek, crop land  
WEST: "RR" Rural Residential; crop land

**PUBLIC SERVICES:** 295<sup>th</sup> Street West is a paved two-lane county highway. 45<sup>th</sup> Street North is a two-lane sand and gravel Sherman Township maintained road. No public sewer or water services are available. The applicant utilizes a lagoon for the current residence.

**CONFORMANCE TO PLANS/POLICIES:** The "Sedgwick County Development Guide" map depicts this site as appropriate for "rural" uses. The "rural" category denotes land that is located beyond the 2030 urban service boundary for Wichita and is also beyond the growth areas for any of the smaller communities located within Sedgwick County. The rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provision for future water and sewer services.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site shall be developed and maintained in general conformance with the approved site plan. Construction of facilities approved by this Conditional Use permit shall be begin within one year of the approval of this request or the Conditional Use shall become null and void. In addition to those uses permitted in the "RR" Rural Residential district, the site shall be limited to the following uses: boarding and breeding of horses and training of horses and riders.
- B. All applicable permits and licenses shall be obtained prior to accepting horses not owned by the applicant or holding any events for the general public (e.g. on-site sewage and water wells, building permits, zoning and animal waste handling and disposal).
- C. Animal wastes from areas where the animals have been confined shall be gathered as needed and as weather permits to prevent flies and odor. The gathered waste shall be disposed of in a manner acceptable to the Wichita-Sedgwick County Health Department.
- D. The horse stable facility shall be maintained free of rodent harborage, including but not limited to improperly stored materials, enclosed partition walls and wooden floors closer than 12 inches to the ground. Grain or protein feed shall be stored in tightly covered rodent-proof metal container or rodent-proof bins. Use shall be made of rodenticide and insecticides for control of rodents and flies. The horse stable shall be cleaned at least once each week, or more often if necessary, to prevent or control odors, fly breeding and rodent infestation.

- E. Weeds and grass around the stable and corral areas shall be controlled and kept at a height that they do not provide a fire hazard or harbor vectors such as mosquitoes or vermin.
- F. The horse stable and any associated board fences or wooden horse shelters shall be protected from deterioration by an appropriate water proofing method. The stable building, fences and shelters shall be constructed of dimensioned building materials.
- G. The maximum number of horses to be boarded at any one time is 50, plus any foals which may be stabled with the mare for a period of one year, at which point they would be stabled separately and count toward the specified limit of 50 horses. The limit of 50 horses includes the applicant's horses. In addition to the 50 horses that may be boarded on-site, an additional 50 horses may be permitted for equestrian events. Additional non-boarded horses may be permitted for equestrian events so long as the total number of horses on-site at any one time does not exceed 100.
- H. All equestrian facilities associated with the applicant's ownership shall be used by the applicant, the applicant's customers and the guests of these users.
- I. The buildings and structures associated with the horse stable shall be open to unannounced inspection by Sedgwick County Department of Code Enforcement and Health Department personnel during reasonable hours to insure continued compliance with the requirements of this Conditional Use.
- J. All outdoor arena related activities shall cease by 11:00 P.M., and any arena related outdoor lighting shall be turned off by 11:30 P.M. Outdoor arena activities shall not begin before sunrise.
- K. The number of non-resident employees shall not exceed five persons.
- L. No public address systems can be employed in a manner that permits the sound to be heard beyond the applicant's property boundaries.
- M. Any violation of the conditions of approval of this Conditional Use shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood. All surrounding land is zoned "RR" Rural Residential. There are scattered large lot residences and farmstead located in the general area. The character of the area is agricultural with crop production as the predominant land use.
- 2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "RR" Rural Residential which permits agricultural pursuits as well as large-lot residential uses. The site is well screened to the north and east. Additional screening has been planted along the west. Riding academy and stables are permitted by Conditional Use permit in the "RR" district.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval will introduce a more intense use than crop production and residential uses, however the site is well screened and has adequate distance from existing residences to minimize detrimental impacts. Also, the conditions placed on the development by the Conditional Use and various code requirements further minimize negative impacts.
- 4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Sedgwick County Development Guide" map depicts this site as appropriate for "rural" uses. The rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provision for future water and sewer services. Equestrian activities are appropriate for rural areas and would be consistent with the Plan's recommendations
- 5. Impact of the proposed development on community facilities: Traffic will increase along 45<sup>th</sup> Street.

**MILLER** "This item is a request for a Conditional Use to permit a Riding Academy, stables and a riding area. The application area is located north of 45<sup>th</sup> Street North and just east about a quarter of a mile from 295<sup>th</sup> Street West. Andale is about 2 miles to the northeast. This is a triangular shaped tract. They have approximately 34 acres of ground. There is a creek that winds its way along the southern boundary and it has quite a bit of natural tree cover. There is a pond area that forms part of their northern boundary and there are quite a few trees along there as well. The applicants have also planted a tree row.

The plot plan is in your staff report as an attachment so that you can kind of get an idea of the dimensions. The site plan is also attached and as you can see, the access would be off of 45<sup>th</sup> Street. There is currently an existing drive that comes back and circles around. Their existing home and personal barn and corrals are back in this area (indicating) and an existing lagoon. The closest house is just to the south along the hedgerow on their west property line, and there is a house across the street to the south and a little bit west from the other house.

What they are proposing over time is to add stables for horses that would not be theirs, a riding arena area and then a practice track. They plowed up a portion of the area where the arena would be. Most of the property is either used for agricultural use or some of the large-lot homes.

Forty-Fifth Street is a two-lane sand and gravel township maintained road. The township was sent notice of this and we have not received any information from them indicating that they have any concerns so far. Staff is supportive of the request and recommends approval, subject to the conditions found on Pages 3 and 4. We did go out to Andale last Thursday night and the Andale Planning Commission recommended approval unanimously and no one showed up to speak in opposition. I would be happy to answer any questions."

**PLATT** "In similar situations, Dale, have we ever put any restrictions on the number of times a year the events could be held in an outdoor arena like that?"

**MILLER** "I think we might have in some early on, possibly. I used two or three of the older ones to model this one off of and I don't remember seeing that, but it is possible that we did."

**MICHAELIS** "Are there any further questions? Thank you, Mr. Miller. May we hear from the applicant, please?"

**TIM SIMON** "Hi, there. I am the owner of this property. Like he said, it used to be an outdoor arena and maybe later on in the year, or maybe in a year from now, we would like to put in an indoor arena for pretty much all-year-round horse events. It is quiet out there, there are plenty of trees around the area. The neighbors we talked to really didn't have a problem with it. They felt that the public needs it for school kids. We have Andale, Colwich, Garden Plain, and St. Joseph kids that are willing to come to these events and maybe a saddle club for the schools. We just wish to have your approval."

**MICHAELIS** "So you are in agreement with all staff comments?"

**SIMON** "Uh huh."

**MICHAELIS** "Are there any questions?"

**GAROFALO** "Sir, on Item J, on Page 4, could you explain for us, do you have to have any of these operations going that late? I think 11:00 and 11:30 is late."

**SIMON** "We are hoping not to go that late, more like 9:30 or 10:00."

**GAROFALO** "Is there a reason why you would have to?"

**SIMON** "Only if it was a rodeo, and we are not really planning on having rodeos. It would be more of a horse show. Most of those are during the day events and they usually are over by 6:00 or 7:00 o'clock."

**GAROFALO** "That is the only thing in the whole list of things that kind of bothers me a little bit is having something to 11:00 or 11:30 at night. I don't know anything about running horseshows or anything, but it just seems pretty late to me."

**SIMON** "Rodeos usually go to 10:00 or 11:00 o'clock."

**BARFIELD** "On Item K, it says 'the number of non-resident employees should not exceed five'. Are you comfortable with that?"

**SIMON** "I think so. My wife and I are going to do it for now, and maybe some of our kids, but if we have anything to do like cleaning stalls or something like that, we can handle it ourselves, we hope."

**MICHAELIS** "Are there any further questions? Thank you, sir. Is there anyone else in the audience wishing to speak in favor of this item? Is there anyone wishing to speak in opposition to? Seeing none, I will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood). All surrounding land is zoned "RR" Rural Residential. There are scattered large lot residences and farmstead located in the general area. The character of the area is agricultural with crop production as the predominant land use. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "RR" Rural Residential which permits agricultural pursuits as well as large-lot residential uses. The site is well screened to the north and east. Additional screening has been planted along the west. Riding academy and stables are permitted by Conditional Use permit in the "RR" district. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval will introduce a more intense use than crop production and residential uses, however the site is well screened and has adequate distance from existing residences to minimize detrimental impacts. Also, the conditions placed on the development by the Conditional Use and various code requirements further minimize negative impacts. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Sedgwick County Development Guide" map depicts this site as appropriate for "rural" uses. The rural designation is intended to accommodate agricultural uses, rural based uses that are no more offensive than normal agricultural uses, and large lot residential subdivisions with provision for future water and sewer services. Equestrian activities are appropriate for rural areas and would be consistent with the Plan's recommendations. Impact of the proposed development on community

facilities: Traffic will increase along 45<sup>th</sup> Street.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. The site shall be developed and maintained in general conformance with the approved site plan. Construction of facilities approved by this Conditional Use permit shall be begin within one year of the approval of this request or the Conditional Use shall become null and void. In addition to those uses permitted in the "RR" Rural Residential district, the site shall be limited to the following uses: boarding and breeding of horses and training of horses and riders.
- B. All applicable permits and licenses shall be obtained prior to accepting horses not owned by the applicant or holding any events for the general public (e.g. on-site sewage and water wells, building permits, zoning and animal waste handling and disposal).
- C. Animal wastes from areas where the animals have been confined shall be gathered as needed and as weather permits to prevent flies and odor. The gathered waste shall be disposed of in a manner acceptable to the Wichita-Sedgwick County Health Department.
- D. The horse stable facility shall be maintained free of rodent harborage, including but not limited to improperly stored materials, enclosed partition walls and wooden floors closer than 12 inches to the ground. Grain or protein feed shall be stored in tightly covered rodent-proof metal container or rodent-proof bins. Use shall be made of rodenticide and insecticides for control of rodents and flies. The horse stable shall be cleaned at least once each week, or more often if necessary, to prevent or control odors, fly breeding and rodent infestation.
- E. Weeds and grass around the stable and corral areas shall be controlled and kept at a height that they do not provide a fire hazard or harbor vectors such as mosquitoes or vermin.
- F. The horse stable and any associated board fences or wooden horse shelters shall be protected from deterioration by an appropriate water proofing method. The stable building, fences and shelters shall be constructed of dimensioned building materials.
- G. The maximum number of horses to be boarded at any one time is 50, plus any foals which may be stabled with the mare for a period of one year, at which point they would be stabled separately and count toward the specified limit of 50 horses. The limit of 50 horses includes the applicant's horses. In addition to the 50 horses that may be boarded on-site, an additional 50 horses may be permitted for equestrian events. Additional non-boarded horses may be permitted for equestrian events so long as the total number of horses on-site at any one time does not exceed 100.
- H. All equestrian facilities associated with the applicant's ownership shall be used by the applicant, the applicant's customers and the guests of these users.
- I. The buildings and structures associated with the horse stable shall be open to unannounced inspection by Sedgwick County Department of Code Enforcement and Health Department personnel during reasonable hours to insure continued compliance with the requirements of this Conditional Use.
- J. All outdoor arena related activities shall cease by 11:00 P.M., and any arena related outdoor lighting shall be turned off by 11:30 P.M. Outdoor arena activities shall not begin before sunrise.
- K. The number of non-resident employees shall not exceed five persons.
- L. No public address systems can be employed in a manner that permits the sound to be heard beyond the applicant's property boundaries.
- M. Any violation of the conditions of approval of this Conditional Use shall declare the Conditional Use permit null and void.

**BARFIELD** moved, **WARREN** seconded the motion, and it carried unanimously (9-0).

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8. **CON2001-00027** – Verizon Wireless/Steve and Wanda Molina request a Conditional Use for a wireless communication facility on property zoned "RR" Rural Residential, described as:

Lease description

A tract of land located in the southeast quarter of section 22, township 28 south, range 2 west, Sedgwick County, Kansas, being more particularly described as follows:

Commencing at the southeast corner of said southeast quarter; thence south 88 degrees 57 feet 12 inches west along the south line of said southeast quarter a distance of 180.07 feet; thence north 01 degrees 02 feet 48 inches west perpendicular to said south line a distance of 142.59 to the point of beginning; thence south 88

degrees 57 feet 12 inches west a distance of 75.00 feet; thence north 01 degrees 02 feet 48 inches west a distance of 75.00 feet; thence north 88 degrees 57 feet 12 inches east a distance of 75.00 feet; thence south 01 degrees 02 feet 48 inches east a distance of 75.00 to the point of beginning. Contains 5,625 square feet or 0.129 acres, more or less. Generally located northwest of the S 55<sup>th</sup> W 151<sup>st</sup> Intersection.

**BILL LONGNECKER**, Planning staff, pointed land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant, Verizon Wireless LLC, is requesting consideration for a Conditional Use to allow a 150-ft wireless monopole on property zoned "RR" Rural Residential. Wireless Communication Facilities over 65-ft in the "RR" Rural Residential zoning may be permitted with a Conditional Use.

The site (5,625 sq-ft, 75-ft x 75-ft) is not platted. The site is located approximately 165-ft west of the W 151<sup>st</sup> and 95-ft north of S 55<sup>th</sup> and approximately 1/3 of a mile south of K-42. The applicant has submitted a site plan showing the proposed use of the subject property. The site plan shows a 75-ft x 75-ft compound with a 6-ft chain link fence (topped with three strands of barbed wired) around it. Inside the fenced compound the 150-ft high tower sits in the middle flanked by an (11-ft, 5-in x 30-ft) equipment shelter. The site plan also shows the location of up to five (12-ft x 20-ft) future carrier equipment shelters. The compound has a proposed 6-inch deep all weather surface on the ground (extending 1-ft around the outside the compound), with the same being used for the drive and parking area. No landscaping is shown on the site plan. There are no existing trees or bushes on the site.

The applicant indicates (see attached memo) that the proposed wireless communication facility is needed for Verizon Wireless to provide coverage towards Clearwater along Kansas State Highway 42 and S 135<sup>th</sup> St W. The same memo indicates that the applicant had unsuccessfully attempted to co-locate on the Southern Kansas Telephone's (SKT) tower, located at the southeast corner of S 63<sup>rd</sup> St – W 135<sup>th</sup> St intersection, approximately one mile from the proposed site. Staff is in the process of verifying this contact. The SKT tower was built in 1985.

The subject property is located in the vicinity of Mid-Continent Airport; therefore, planning staff contacted airport staff to receive their input on the proposed tower. The airport staff has indicated that a form 7460-1 must be filed. Staff will not be certain of any negative impacts on the operations of Mid-Continent until the FAA has reviewed the location of the requested monopole. Therefore, the airport staff requested to review the FAA's decision regarding this monopole prior to the issuance of a building permit so that the airport staff may ask the FAA modify their decision if the airport staff feels the FAA has reached their decision in error.

The site and the surrounding area are rural, with most of the property in the surrounding vicinity being used for agriculture. The site and the surrounding properties are all zoned "RR" Rural Residential. The owner's residence is located to the west of the proposed facility. The owner's residence is the closest to the proposed facility. There is a residence to the southwest and residences (5) fronting W 151<sup>st</sup> on the northeast and southeast corners of the S 55<sup>th</sup> - W 151<sup>st</sup> intersection. All residences are located within approximately 250-ft – 600-ft of the proposed facility. Moving the facility north to be closer to K-42 would not lessen the impact of the facility on the existing residences; the facility would be closer to the residences on the northeast section of the S 55<sup>th</sup> - W 151<sup>st</sup> intersection. The current site is approximately in the middle of the existing residences in the area.

**CASE HISTORY:** The property is being used for agriculture and is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR" Rural Residential	Agriculture
EAST:	"RR" Rural Residential	Single family residences
SOUTH:	"RR" Rural Residential	Agriculture & farm related residence
WEST:	"RR" Rural Residential	Single family residence

**PUBLIC SERVICES:** No municipal supplied public services are required. The site has access to W 55<sup>th</sup> St S, an unpaved county road, and is less than a mile from K-42.

**CONFORMANCE TO PLANS/POLICIES:** The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

**RECOMMENDATION:** Based on the information available prior to the public hearing, staff recommends the application be APPROVED, subject to platting within one year and to the following conditions.

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. A landscape plan shall be submitted for approval by the Planning Director that provides 4" caliper shade trees to be planted and maintained every 40 feet along the perimeter of the site; a minimum of 2 shade trees per side.
- F. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- G. Approval of the Conditional Use constitutes a waiver of the Compatibility Height Standard for the wireless communication facility.
- H. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- I. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- J. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The applicant's site and the surrounding area is zoned "RR" Rural Residential. Use of the surrounding area is agricultural with single-family residences or farm related residence located approximately 300-ft – 600-ft of the proposed facility. The proposed site's owner's house is west of the proposed site and is the closest residence.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is currently undeveloped. Wireless communication facilities in excess of 65-ft in height in "RR" Rural Residential zoning may be permitted as a Conditional Use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property. Any detrimental affects would be mitigated by the recommended condition of approval and code required development standards.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; by being placed in an area where trees obscure some of the facility; and by being screened through landscaping. The proposed wireless communication facility does not comply with the compatibility height standard of the Uniform Zoning Code since it is located less than 150 feet from the nearest lot line of property zoned "TF-3" or more restrictive; however, the applicant owns the adjoining property and it is undeveloped, so there should be no compatibility issues concerning the proposed wireless communication facility.

Impact of the proposed development on community facilities: FAA approval should ensure that the proposed monopole does not detrimentally impact the operation of airports in the vicinity.

**PLATT** "As the owner of a building that actively leases space to the cell tower business, and as President of the Board of Directors who govern the building, I will step down from Item Nos. 8 and 9."

**LONGNECKER** "This item is a request for a Conditional Use in Rural Residential zoning for a wireless communication facility. The location of this facility is northwest of the 55<sup>th</sup> Street South and 151<sup>st</sup> West Street intersection. The applicant is Verizon Wireless; they are requesting this to provide wireless services throughout the Clearwater and K-42 area. The applicant submitted a site plan, which showed a 75 x 75 site compound. The site shows a 6-foot chain link fence going around with 3 strands of barbed wire. Inside the fence compound there is a 150-foot monopole tower, flanked by an 11 ft. x 5 x 30 foot equipment shelter.

The site plan also shows the location of up to 5 future carrier equipment shelters on this site. No landscaping was shown on the plan and there are no existing trees or bushes on the site. Again, the applicant proposes to have this communication facility built for coverage for the Clearwater and K-42 area.

The applicant tried unsuccessfully in a memo, which I believe is attached to your staff report, to co-locate on a Southern Kansas Telephone tower, located at the southeast corner of 63<sup>rd</sup> Street South and 135<sup>th</sup> Street West intersection. That is approximately 1 mile from this proposed site. Staff has called the Southern Kansas Telephone Company, but have not been able to verify that yet, even though we have left several messages.

The site is undeveloped agricultural properties. The applicant is looking to use the property of the homeowner—which is the closest residence to the proposed site. There is agricultural land to the south; to the southeast there is a residence and behind this residence further south along 151<sup>st</sup> Street is another residence. To the northeast of the intersection, there are several other residences. All of the property in this area is zoned Rural Residential and again, it is either being used for agricultural use or for single-family residential use.

Staff contacted Mid-Continent Airport because the proposed site is located in the vicinity of the airport. The staff at Mid-Continent indicated that they needed to file a Form 7460-1. This form needs to be reviewed by the FAA and then Mid-Continent in turn would review the FAA comments. The airport staff requested that any decision on the site or any permits on the site be delayed until they had a chance to get input to the staff on this particular issue. Short of waiting for the Mid-Continent Airport and the FAA to comment on the suitability of this site, staff recommends approval of this Conditional Use, subject to the conditions A through J on Pages 3 and 4 of your staff report. The staff's reasoning on arriving to this recommended approval on Pages 4 and 5 of your staff report. Are there any questions?"

**MICHAELIS** "Are there any questions of staff? Thank you, Mr. Longnecker. Applicant please."

**JAMES HAWKINS** "I am here for Verizon Wireless. This is Theresa Edwards, also an agent for Verizon. We are in agreement with the staff's recommendations and the conditions placed thereon. What we have brought to show you, if you would like to see it on the overhead, is an example of propagation studies before, and as proposed, that would show the additional coverage we would get in southwest Wichita by adding this tower at that location."

**MICHAELIS** "Does anybody wish to see it? I think we have seen those plenty of times and we do understand it."

**HAWKINS** "Okay."

**EDWARDS** "Would you like a copy for the file?"

**KROUT** "Bill, do we have a copy for our file?"

**LONGNECKER** "Yes, sir, we do."

**MICHAELIS** "Are there any questions of the applicant? Okay. I would like to make a comment. I like the way you put the future locations on the site plan. To my knowledge that is the first one we have seen like that and I think that is looking to the future."

**HAWKINS** "Thank you."

**MICHAELIS** "Is there anyone else in the audience wishing to speak in favor of this application? Okay."

**THOMAS CREEL** "I live at 5590 South 151<sup>st</sup> Street West, right across the street from this. We have been the victims of the Southern Kansas Telephone Company for 20 years. I personally have been. I can't call the first house across K-42 without it being long distance. We have been using cell phones and calling cards—and it is really inconvenient with the calling cards because you have to punch about 50 numbers to call home, but my wife can't even go to the store in Clearwater, and if she forgets something, I can't call her. It won't reach Clearwater. That is a real shame.

The main reason people get cell phones is for emergencies, like when people work nights. You wonder, can they get through or not. We lose communications with Wichita at about 135<sup>th</sup> Street and K-42. It is a sad thing when we can talk to people on the moon but can't call Wichita without it being long distance. That is all I have to say. Thank you."

**MICHAELIS** "Thank you. Are there any questions for the speaker? Is there anyone else wishing to speak in favor of this? Is there anyone wishing to speak in opposition to?"

**GENE LAYMAN** "I live at 11806 West MacArthur Road, and I own the property directly across the road east of this facility. What type of screening will be provided at this facility. I didn't see anything on the overhead about evergreen trees. It is open farm land there. That is the only question I have."

**LONGNECKER** "On Page 4 of the staff report, Item E states that staff requests a landscape plan be submitted for approval by the Planning Director that provides a 4" caliber shade trees to be planted and maintained every 40 feet along the perimeter of the site, a minimum of two shade trees per side."

**MICHAELIS** "Are there any other speakers? If not, I will bring it back to the Commission."

**BARFIELD** "I have a question for staff. Did Mid-Continent or the FAA give you any timetable as to when they might get back with you?"



**LONGNECKER** "We received a communication from Mid-Continent approximately 10 days ago. I have not contacted Mid-Continent to find out what they found out. At the time of the communication, they did not give a timeframe. I will find out what that timeframe is. Except for that one issue, I don't see any reason why this is not a good site for this particular use."

**BARFIELD** "I probably would agree with you, but I would also be inclined to say that I think that is probably a pretty good reason why we should not rush to a decision on this. That is my take on it."

**MICHAELIS** "Isn't this quite a ways from the airport? If an airport is down to 150 feet this far from the airport, they have serious problems."

**KROUT** "It is not just a question of height—it is also a question of communications. Mr. Hentzen didn't ask that question, he made a statement similar to that at your last meeting, but they are as concerned with the potential for disrupting communications as they are with the issue of height. It is not just a question of is this an obstruction to a landing path."

**BISHOP** "Am I correct in assuming that Condition No. F would mean that this FAA form would have to be completed and filed with the Planning Department?"

**LONGNECKER** "Yes, ma'am. We would have to receive documentation saying what the conditions are. The applicant themselves would also receive those conditions and apply them to this particular site development."

**MICHAELIS** "That would have to happen before they could get a permit?"

**LONGNECKER** "Yes, sir."

**JOHNSON** "I just wanted to second what the one gentleman said about the cell phone. I live at 167<sup>th</sup> Street and MacArthur and have an office at Maize Road and MacArthur, and my phone will go dead between the house and the shop. This is really needed. I am going to move to approve it."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood). The applicant's site and the surrounding area is zoned "RR" Rural Residential. Use of the surrounding area is agricultural with single-family residences or farm related residence located approximately 300-ft – 600-ft of the proposed facility. The proposed site's owner's house is west of the proposed site and is the closest residence. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is currently undeveloped. Wireless communication facilities in excess of 65-ft in height in "RR" Rural Residential zoning may be permitted as a Conditional Use. Extent to which removal of the restrictions will detrimentally affect nearby property. Any detrimental affects would be mitigated by the recommended condition of approval and code required development standards. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which can accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; by being placed in an area where trees obscure some of the facility; and by being screened through landscaping. The proposed wireless communication facility does not comply with the compatibility height standard of the Uniform Zoning Code since it is located less than 150 feet from the nearest lot line of property zoned "TF-3" or more restrictive; however, the applicant owns the adjoining property and it is undeveloped, so there should be no compatibility issues concerning the proposed wireless communication facility. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed monopole does not detrimentally impact the operation of airports in the vicinity.) I move that we recommend to the governing body that the request be approved, subject to platting within one year and to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.

- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. A landscape plan shall be submitted for approval by the Planning Director that provides 4" caliper shade trees to be planted and maintained every 40 feet along the perimeter of the site; a minimum of 2 shade trees per side.
- F. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- G. Approval of the Conditional Use constitutes a waiver of the Compatibility Height Standard for the wireless communication facility.
- H. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- I. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- J. Any violation of the conditions of approval shall render the Conditional Use null and void.

**JOHNSON** moved, **WARNER** seconded the motion, and it carried with 8 votes in favor, Barfield opposed. Platt abstained.

9. **CON2001-00028** – Bob and Anna Haley (Owners); Verizon Wireless LLC (Applicant); Communication Equipment Specialists, Inc. c/o Teresa C. Edwards (Agent) request a Conditional use for a wireless communication facility located north of 101<sup>st</sup> Street North and west of Broadway, described as:

A tract of land located in the southeast quarter of section 17, township 25 south, range 1 east, in Sedgwick County, Kansas, being more particularly described as follows: Commencing at the southeast corner of said southeast quarter; thence north 01 degrees 00'13" west along the east line of said southeast quarter a distance of 859.96 feet; thence south 88 degrees 59'47" west leaving said east line a distance of 179.99 feet to the point of beginning of the tract of land to be described; thence continuing south 88 degrees 59'47" west a distance of 75.00 feet; thence north 01 degrees 00'13" west a distance of 75.00 feet; thence north 88 degrees 59'47" east a distance of 75.00 feet; thence south 01 degrees 00'13" east a distance of 75.00 feet to the point of beginning. Contains 5,625 square feet or 0.129 acres, more or less. Generally located north of 101<sup>st</sup> Street North and west of Broadway.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking a Conditional Use to permit the construction of a 150-foot high monopole tower (see attached elevation rendering) for use by Verizon Wireless LLC. The proposed site is zoned "RR" Rural Residential. Wireless Communication Facilities over 65 feet in height in the "RR" Rural Residential zoning district may be permitted with a Conditional Use.

The proposed tower would be sited on a 5,625 square foot area located north of 101<sup>st</sup> Street North and west of Broadway. Access to the site is proposed via an existing gravel drive. The applicant's site plan (attached) depicts a 75-foot by 75-foot compound with the tower shown in the center of the compound and the initial ground-level equipment shown in the western portion of the compound. The compound is shown as being enclosed by a six-foot high chain link fence with barbed wire. No landscaping is shown on the site plan.

The applicant indicates (see attached memo) that the proposed wireless communication is needed for Verizon Wireless to provide improved wireless telephone coverage in Valley Center and along I-135. The applicant indicates they attempted to locate their antennas on a water tower located approximately one mile to the east; however, Rural Water District #2 would not grant permission to locate the antennas on the water tower.

The character of the surrounding area is rural, with most of the property in the vicinity used for agriculture. The owner's house and farm buildings are located to the north on the parent tract of the subject property. With the exception of a mobile home park located approximately 1/3 of a mile to the west that is zoned "GC" General Commercial, all property surrounding the site is zoned "RR" Rural Residential. The nearest residence not owned by the applicant is located approximately 250 feet east of the site across Broadway.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR"	Farm-related residence
SOUTH:	"RR"	Agriculture
EAST:	"RR"	Single-family residence
WEST:	"RR"	Agriculture

**PUBLIC SERVICES:** No municipally supplied public services are required. The site has access to Broadway, a four-lane County arterial street.

**CONFORMANCE TO PLANS/POLICIES:** The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- K. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- L. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- M. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- N. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- O. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- P. A landscape plan shall be submitted for approval by the Planning Director that provides 4 inch caliper shade trees to be planted and maintained every 40 feet along the eastern boundary of the parent tract as near as possible to Broadway from the southern edge of the access drive to the southern edge of the lease area.
- Q. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- R. Approval of the Conditional Use constitutes a waiver of the Compatibility Height Standard for the wireless communication facility.
- S. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- T. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- U. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- V. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: The character of the surrounding area is rural, with most of the property in the vicinity used for agriculture. The owner's house and farm buildings are located to the north on the parent tract of the subject property. With the exception of a mobile home park located approximately 1/3 of a mile to the west that is zoned "GC" General Commercial, all property surrounding the site is zoned "RR" Rural Residential. The nearest residence not owned by the applicant is located approximately 250 feet east of the site across Broadway.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "RR" Rural Residential and is currently undeveloped. Wireless communication facilities in excess of 65 feet in height in the "RR" Rural Residential zoning district may be permitted as a Conditional Use.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently undeveloped. The closest developed property not owned by the applicant is a single-family residence located approximately 250 feet to the east across Broadway. The only impact to be noted at the time this report was

prepared is the visual impact of a tower, and the visual impact should be reduced by the landscaping required by the conditions of approval.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility conforms to the Location Guidelines of the Wireless Communication Master Plan since there are no other towers or tall structures in the vicinity of the site which are available to accommodate the communication needs of the applicant. The proposed wireless communication facility conforms to the Design Guidelines of the Wireless Communication Master Plan by minimizing the height, mass, proportion, and silhouette of the facility through its monopole design; by utilizing an unobtrusive color with a matte finish to minimize glare; and by being screened through landscaping. The proposed wireless communication facility does not comply with the compatibility height standard of the Uniform Zoning Code since it is located less than 150 feet from the nearest lot line of property zoned "TF-3" or more restrictive; however, the applicant owns the adjoining property and it is undeveloped, so there should be no compatibility issues concerning the proposed wireless communication facility.
5. Impact of the proposed development on community facilities: FAA approval should ensure that the proposed monopole does not detrimentally impact the operation of airports in the vicinity.

**KNEBEL** "This is a request for a communication tower by the same company, located at 101<sup>st</sup> Street North and Broadway. This case was heard by the Valley Center Planning Commission on Tuesday night. There were concerns—this gentleman here in the audience lives in a house in this location here (indicating). His house is oriented such that it faces to the west where this particular tower is proposed to be located. The Valley Center Planning Commission requested—and I believe that the applicant is agreeable—to a one month deferral on this to further review this and to see if perhaps this site can't be located in another location on the owner's property—who owns 134 acres—such that it is less obtrusive to the adjoining property owner.

That will be the recommendation of staff, and I believe that the applicant concurs with that. I did talk to the neighboring property owner and he did mention that he wanted to relay his concerns to the Commission as well."

**MICHAELIS** "Okay. Applicant, please."

**JIM HAWKINS** "I am here, again, for Horizon Communications. We are asking for permission to defer this decision until we have had an opportunity to take a look at possibility of the cost involved, and the engineering and the coverage involved in moving this slightly from in front of the neighboring and adjoining house."

**MICHAELIS** "Okay. Is there anyone else in the audience that is here to speak on this particular item? Do you want to speak now, sir, or do you want to wait until this comes back up for final approval?"

**JEFF BERRY** "There are a few things I would like to say right now. I live at 10136 North Broadway, which is directly across—approximately 250 feet from where they would like to install the tower. Reading through this Master Plan, I see several options in it that I don't know why they haven't addressed, but beyond that, our house faces the west—we moved to the country because we love the county—we watch some very beautiful sunsets every night out there. This would stand right in the middle of that. Our house actually sits about 4 to 5 feet lower in elevation than the site that they want to put it on, directly in front of our picture window. This will actually block every window in the front of our house, the master bedroom and living room.

There is no amount of landscaping on 4 inch trees or anything else that can be done around it that looking up we will not see it constantly. Also, with that, since I addressed the Valley Center Planning Commission on Tuesday evening, I have done plenty of phone calling around to see actually what this would do to my property value. Every person that I called, as far as real estate agents and appraisers—of course appraisers can't come right out and say it, I have been told, it is illegal for them to do it—but they have said yes, this will hurt my property value. Not only monetarily because people don't want to move to the county and look at that out their picture window constantly, but also in a timely manner of selling our property. Several of them that I have talked to said 'yeah, we've got houses we are trying to sell that are heavy with power lines or towers', and they cannot sell them at the going price in any type of reasonable amount of time. So, if my wife and I wanted to move on out and build somewhere, we could get stuck with two house payments and go bankrupt before they could sell it.

These are the things I am really concerned about, along with some others. I faxed over a letter that my wife and I have written up. I would like for you to consider those things. This is not something that they can hide the obstruction of. I appreciate it."

**WARREN** "Could you show us up there on the map where you live in relation to that tower?"

**BERRY** (Indicating) "The tower is right here; this is my property. Our house sits on this very front corner right here. About 15 foot off the fence line."

**JOHNSON** "Whereabouts is the highway patrol tower from your house?"

**BERRY** "The highway patrol tower is on down Broadway just south of 85<sup>th</sup> Street. The tower they are talking about for the rural water is on down 101<sup>st</sup>, and over the bypass. That is probably a mile and a half away. With that, I do not understand

if these were alternative places as Valley Center offered the other night to put it on their water tower in town. Why couldn't that be done if it was okay in their opinion to put it down there?

The highway patrol one I totally understand. They deal with human life. They can't take the chance of one of their radio calls in an emergency being interrupted. I agree with that 1,000%. What I do not understand is, we had a pipeline come through recently and took a lot of our property. There was nothing I could do about that, but why can't the utility companies work together so you don't have to put stuff out in the middle of the nice fields and all of this? I think something should be done about that."

**GAROFALO** "Did you say that at the Valley Center Planning Commission meeting that Valley Center offered?"

**BERRY** "Yeah, they have a tower there that I believe also has something on it antenna-wise, and they asked why they couldn't put it there and their response was that it wouldn't cover the north part of Valley Center. Along with that, I mentioned that at that point I used to carry a cell phone for the Sedgwick County Zoo that I used daily. My employees would call in sick on it at 7:00 o'clock in the morning that we used through Cellular One, which they now own. I never had a problem—I never had a fade-out. I did, when I was going into Newton, it would go onto roam, but as far as that general location, and in northern Valley Center, I for one, have used it out there for some years and never had a problem. So I don't understand if down here they could put a tower and it would work, then why can't they do it somewhere different than where it is at?"

If Mr. Haley wants it on his property, that's fine. I don't have a problem with that. I just don't want it in front of my picture window."

**MICHAELIS** "Okay, thank you, sir. Is there anyone else in the audience that wishes to speak now on this case? The applicant has two minutes for rebuttal."

**HAWKINS** "We are, in fact, looking at the possibility, and the engineering costs, of moving that away from Mr. Berry's house. The Valley Center option was not going to work, for instance, because it was just too far south for us. We did investigate all of the other towers in the area, because quite frankly, we prefer to co-locate because it is much, much cheaper than it is to build a new tower. But we are, in fact, looking at the engineering of moving this around on Mr. Haley's property in contrast to the cost involved in doing that."

**BARFIELD** "Sir, how much time are you looking at for a deferral?"

**HAWKINS** "I believe we deferred the review by Valley Center for one month."

**KROUT** "I spoke to the administrator in Valley Center and he said that they had scheduled the Planning Commission meeting for June 18. It is a special meeting and that would mean that the next Planning Commission meeting after that would be the 21<sup>st</sup> of June, which is one month."

**MOTION:** That the item be deferred to the June 21 Planning Commission meeting.

**JOHNSON** moved, **WARNER** seconded the motion, and it carried unanimously. Platt abstained.

**10. Discussion on amendments to Unified Zoning Code: Parking and storage requirements.**

**DONNA GOLTRY**, Planning staff "This is the continuation of the topic of parking and storing of vehicles in relationship to how they are treated within the Unified Zoning Code. For the record I will state that all of the remaining parts of the proposed Zoning Code amendments have been passed by the City and County bodies and took effect effective last Friday. So any subsequent amendments that we are doing now on parking and storage of vehicles, and I will bring up another subject that came up over the County Commission level—will have to be treated as an amendment to the re-codified Zoning Code. So we will be required to re-advertise these items as an official public hearing in the newspaper. The first date that we can do that would be effective June 21.

So today we can have an informal discussion and what I intend to do is to bring you up to date as to where the MAPC Advance Plans Committee—that includes Mr. Garofalo, Ms. Bishop—you are the only two here today from the subcommittee—is at. We have met the last two Tuesday mornings at 7:30 to grapple with this issue.

Beginning with the topic of parking and storage of vehicles, if you recall when we had the last discussion at MAPC, the main concern that was discussed by the people who were testifying was that they felt that limiting the trailers' size that were allowed to be stored in yards, either in the rear yard in a city situation, or in front yards in a county situation, by limiting it to those that are exempt from registration by the State of Kansas, which is 2,000 pounds for the trailer plus load, was too low. We have since discussed this with the Highway Patrol to find out what other kinds of options we had, in terms of cut-offs.

From our discussions with Lieutenant Roger Bowman, we looked at the next classification up, which is called the 2M Plus tag. What that is is 2,000 to 8,000 pounds, which probably if you are getting past 8,000 pounds, most people would think that you were getting something too large to be putting in your neighbor's back yard.

So we will be looking at that. That is what the Advance Plans Committee has been looking at, is allowing up to the 2M Plus tag. So the exemption would be for those that are exempted from registration for agricultural purposes; those that are exempted because they are below 2,000 pounds, and those that are registered or would be required to be registered at the 2M Plus trailer tag.

Some other tweaks we are looking at is to redefine 'vehicle, commercial' to correspond with the definition in the City's Traffic Code. It is probably a better definition than the one we have had in the past in the Zoning Code. Also to redefine trailers to correspond to the State's definition of trailers, and again, it is a better definition than the one that we had previously offered you. It is just clearer.

**WARREN** "On that last item there, as we got into the trailers, the last phase—you said those that would be exempt from registration because of the 2,000 pound limit, and those that are registered over 2,000 pounds, but you didn't put a maximum on that."

**GOLTRY** "It is a 2M Plus. That designation is 2,000 to 8,000."

**WARREN** "Oh, I see. So it is registered over, but limited to a 2M Plus tag."

**GOLTRY** "Yes. And what we talked about fairly extensively at the MAPC Advance Plans Committee is that it should be registered, because we all know that there are a lot of trailers in people's back yards that probably should be registered, but aren't."

**WARREN** "So this would cover up to 8,000 pounds by virtue of statute under the 2M tag?"

**GOLTRY** "Yes, it would. One of the reasons that the Code Enforcement people were looking for a way to define it like the 2M Plus tag is because it makes it easier for Code Enforcement reasons when they go out to look, they kind of have an idea what they are looking for instead of just an amorphous definition.

In terms of what you can store in back yards within the city and interior side yards within the city, it is the same as the list we were working at before, with the exception of the change for trailers to redefine trailers; and that would be motor vehicles except inoperable vehicles, boats, the trailers, as we just discussed and unoccupied RVs. One thing we looked at and talked about in the committee is including language that shows that this does not mean you can have outdoor storage of materials and equipment used for a home occupation, because the current code already says that you cannot have outdoor storage of materials, equipment and vehicles for the home occupation. You can have them stored inside a garage, for instance, but you can't just have open storage in your back yard.

In terms of the county, it is not restricted to have to be in the rear or into your side yard, it can also be in the front yard, or it can be on a street side yard, with the exception—and here is the two differences in the county: the county would allow motor vehicles to be stored, but they would be in conformance with the recently enacted Nuisance Code that we have discussed previously.

That is a synopsis of what we are suggesting on parking and storage of vehicles. The other issue that came up came up here in our meeting previously. It also came up again at the County Commission meeting. It was on some ambiguities in the non-conformities language within Article I and Article VII of the Code. As a result of that request that we re-evaluate it, we have decided that yes, probably it is somewhat confusing on how you figure out what we are trying to say about non-conformities. I will try to describe it. I think Marvin has a better description of the three situations that you can fall within in terms of non-conformities.

First, you have non-conforming uses that existed prior to the adoption of the Unified Code on March 25, 1996. So they were your old 'grandfathered' uses; they didn't comply with the old County Resolution, they didn't comply with the old City Ordinance that was the old City Zoning Code. So those are non-conforming uses. Then, you have all existing exempted uses that would have become non-conforming with the adoption of the 1996 Code, on that date. In other words, something was a lawful use and was in compliance prior to the adoption of the Unified Zoning Code. At the adoption of the Unified Code, there was language that stated 'no non-conformities are created by adoption of the 1996 Code'. So, if you will, think about this as a privileged class of uses. Those that would have become non-conforming at that snapshot of time did not become. We have specific language within the Code related to them.

Then you have the third situation. That is that since 1996, you have done subsequent amendments. You did amendments, I believe, in 1997 on mobile homes. Rural home occupations changed in either 1998 or 1999. Again, there were some minor amendments on mobile homes in 2000. Those also represented situations where non-conformities could have been created by the adoption of the Code. They would be considered non-conforming uses because it was only those ones that became non-conforming by adoption that would have otherwise become non-conforming by adoption of the 1996 Code that did not become so, and instead are considered exempted uses.

Now, if you think about the three categories, keeping this straight in the mind of the administrators has proved difficult and has been confusing to the public as well. So we are looking at a re-write of Articles I and VII related to these provisions

that will clarify it, and it will state, for instance—draft language we are working on—would say 'non-conformities existing exemptions created by the Code, non-conformities arising because changes in jurisdictional boundaries and non-conformities arising because of an amendment to this Code'. So, in other words, it breaks it out much clearer. I think because we will have to be doing a public hearing anyway on this, and because we just talked about it on Tuesday, we just got some preliminary input from the attorneys from both the City and the County since Tuesday. It is premature to be passing around the language at this point and trying to get into the nits and nats of the exact language, but defer that to when we do have our official public hearing on it.

The major change we will be offering on registration of non-conformities has to do with under the existing Code. It says that if you had this non-conformity you had to register it within one year. As a practical matter, most people don't know when they have a non-conforming use until they come in to get a building permit. When they come in to get that building permit, maybe 3 or 4 years later, that is the first they may have had an inkling that they were non-conforming. So the way the current Code is written, it says that you had to have registered it within one year and otherwise you have to appeal to the Board of Zoning Appeals (BZA). We will be suggesting that that time limitation be eliminated entirely and instead, each of the Code Administrators, that being the Code Enforcement of the County and the City, will have their administrative procedures where they look at the evidence that the people submit to determine whether or not they were non-conforming as of a certain date, and they will accept that evidence at that time. They will go forward with a recommendation either that they register that non-conformity, or if they find that the people don't have adequate evidence, then they will have recourse to go to the Board of Zoning Appeals to make an appeal of the administrative decision by the Zoning Administrator.

So that will be a change that will be offered. It is one that should simplify the life of people who, in the past have faced this one-year barrier. I will stand for questions."

**MICHAELIS** "Are there any questions of Donna? What exactly are we supposed to do with this today?"

**GOLTRY** "We have to re-advertise. I just wanted to give you a progress report. I know we have several people here who probably would like an opportunity to speak. I know that Mr. John Dailey has presented—I sent around a piece of paper that he submitted for the Advance Plans Committee. I didn't actually get it passed out at Advance Plans, I didn't see it in my mailbox until afterwards. I got it to some of the members but not all of the members. These are some suggestions he had on the same issue of non-conformities and how to re-write that.

So I would suggest that if you feel that you wish to do so, you can listen to testimony today. We don't need to take any official action today."

**MICHAELIS** "I am trying to decide if it would do us any good to listen to it today and then listen to it again in four weeks, or whenever. It is going to be the same thing."

**BISHOP** "Was today's meeting advertised?"

**GOLTRY** "The items were deferred from the previous meeting to today."

**MICHAELIS** "And it was advertised."

**KROUT** "Actually, the official hearing on the original zoning amendments was closed, so we haven't advertised in the newspaper of any public hearings, but we have advertised that we were going to have this item on the agenda. We didn't know if you would open it up or not. I would suggest that if there is input, let's take it now. We will be that much farther along down the road in terms of coming back with the proposal."

**WARREN** "I would like to have a show of hands of those who would speak if we were to allow them to."

**MICHAELIS** "Okay. How many in the audience are wishing to speak on this. Two? Okay. But I would ask the two who are going to be speaking, whatever you say today, if you come back the next time, please have it different, if you could."

**JOHN DAILEY** "My address is P.O. Box 381 Valley Center, Kansas. I submitted my information when they were going to start talking about the 2001 just the other day. Donna has said a lot already about what is in there, like the no deadlines. Marvin brought that up to me on the phone, and I had already thought of that, too. That seems to be going okay.

The registration process in the County Commission meeting when they did pass everything but these subjects, Commissioner Norton and then also Marvin also noted that it could be simplified on the registration, and it does seem like they are doing some work on that. I would like to see some guidelines along with that for the administrator that conditions that it isn't so hard for you to prove because they have not taken the word of the landowner. They won't take the word of your neighbors—they say they will lie to them. So if there are some conditions—and I just have three conditions. That they accept it unless they have definite evidence. If a neighbor comes up and says 'hey, that has changed within the last year, and he wasn't supposed to be doing that', then if they have an affidavit from a neighbor that says that, then they have some evidence. But just turning you down for no reason, that should not be there. There should be some guidelines that if you have some of these to present, then they are accepted and you have a right to register.

On the very first at the top there on the right, I put down the Article No., which is, in the book I have, was on Page 4. But some things changed there, so it is around that in the general provisions. The non-conformities, even the way Donna has

improved it, it is still a little dicey there. There are state laws that say that the existing uses are not changed. So that has to go along with State law. So, I would like to hear the committee discuss and recommend that they do put some guidelines in that mainly say that the administrator needs to look at that carefully and not just say no, we don't believe you. That is about all I have to say now."

**MICHAELIS** "Are there any questions of Mr. Dailey?"

**BISHOP** "If you don't agree with the Zoning Code Administrator's decision, am I correct in assuming that you can appeal that to the Board of Zoning Appeals?"

**DAILEY** "Right. But, then again, you have to deal with the paper work and there is a cost to that. When you plain proof that things have happened—and see a lot of this, on a personal basis, if it is a business, yeah you've got bills, you've got tax receipts that you can show that this has happened, but if you have a personal use this is part of your home, then you don't have these types of things. They just automatically don't believe you. That is the problem, that they don't believe you. You have to prove that you are innocent. In a lot of cases, I can see where that applies, but in a personal use where you are doing it on your own land, then it is hard to prove, even with aerial photos that are there in the office. They still don't believe things. So that is the main reason that I would like to have some guidelines that say that they have to accept the photos, you have to accept the word of the landowner and his neighbors unless they have some proof to the opposite."

**GAROFALO** "Mr. Dailey, do you have a specific instance of this happening that you can explain to us? It isn't clear to me what you are saying."

**DAILEY** "Thirty years ago, I bought an acreage. It is 30 acres now, it was 40 at one time, and then some got condemned, but 30 years ago I bought some land out in the county on Meridian Street. It was way out in the County at the time. Now I am right next door to Wichita. But I had, for hobby purposes, cars. Some run, some don't. It was zoned Light Industrial, mainly because when it was zoned, there were oil tanks on the land, crude oil storage tanks, large ones, at a pump station, so they zoned quite a few acres there—probably 100 acres altogether that is zoned the Light Industrial. You could use that as vehicle storage, which, at that time, until 1996, did include inoperable vehicles. When the 1996 one came in, you could not have the inoperable in a vehicle storage yard. So since I had it before 1996, and there are aerial photos that show that, and my neighbors also have cars like that, and have had them every since I have lived there, that I should be what I call 'grandfathered', but the administrator said that I didn't have enough evidence. I may be the only one in the county like that."

**GAROFALO** "Do those aerial photos have dates on them?"

**DAILEY** "Yes. They are over here in the Planning Department office. They claimed that they can't tell that they are cars. Well, there are cars on Meridian, in driveways of the housing areas, and there are cars on the driveways, and you can see what they are. I have cars in the trees and they say they can't tell what they are. But from the air, you can tell what they are, they just don't want to tell what they are."

**GAROFALO** "Did they go out and look at it?"

**DAILEY** "Not at the time that it would have done me any good. It was at the time they wanted to give me a ticket. That is when they went to look at it. I didn't know I couldn't have them there because I have been down to the zoning department before the 1996 Code came out and verified, just for my own information, that I could have them there so I wouldn't have any trouble. So I thought I wasn't doing anything wrong until all of a sudden an inspector showed up and said I couldn't have them there. I said I should have been grandfathered, and they wouldn't agree with me. We have been fighting this for a year or so."

**MICHAELIS** "Thank you, Mr. Dailey. Next speaker."

**KELLY WENDELN** "My address is Box 1817 Wichita. I generally favor the amendments to the Unified Zoning Code concerning parking, storage and screening requirements to protect private property rights. I would like to ask this Commission to include these changes in the Code. Are there any questions? Thank you."

**MICHAELIS** "Are there any questions of the speaker? Okay, thank you, sir. Is there anyone else wishing to speak on this item? Okay, I guess we really don't need to do anything else with this, so we will bring it to an end now until it comes back again."

Are there any other matters?" Okay. Then I will take a motion to adjourn."

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The Metropolitan Area Planning Department informally adjourned at 3:20 p.m.

State of Kansas        )  
Sedgwick County     ) ss



I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Marvin S. Krout, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)